STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

MCI Telecommunications Corporation	)	
Petition for Arbitration Pursuant to Section	)	
252 (b) of the Telecommunications Act of	)	Case No. U-11168
1996 to Establish an Interconnection	)	
Agreement with Michigan Bell Telephone	)	
Company d/b/a Ameritech Michigan	)	

DECISION OF THE ARBITRATION PANEL

Issued and Served: November 26, 1996

6. **ISSUE:**

What rate must Ameritech pay to MCI for the "transport and termination" of local traffic? (Issue 1.2B)

DECISION:

The Panel finds Ameritech should pay MCI the end office interconnection rate of $.00393 and the tandem interconnection rate of $.0044 per minute for the transport and termination of traffic. The Panel agrees with Ameritech that MCI's proposed method of compensation is not truly symmetrical because Ameritech would always be required to pay MCI the tandem interconnection rate, regardless of where Ameritech actually connects to MCI. Under the FCC rules, Ameritech must pay such a rate only if MCI demonstrates that its switch serves a "geographic area comparable to the area" served by Ameritech's tandem switch. (See, 47 C.F.R. § 51.711). MCI has not produced sufficient evidence to persuade the Panel. The Panel concludes that Ameritech should be allowed to connect to MCI's end offices and to pay separate end office and tandem rates based on the point of interconnection. If Ameritech interconnects with MCI at an end office, Ameritech should pay the same rate that MCI would pay if it interconnected with Ameritech at an end office.

8. **ISSUE:**

Whether transiting is required by law to be offered by Ameritech? (Issue 1.4A)

DECISION:

The Panel finds that unbundled access to AIN triggers should not be required at this time. The FCC declined to find direct access to AIN triggers technically feasible (FCC Order, ¶ 502). The Panel is persuaded that granting carriers direct, unmediated access to Ameritech's AIN triggers would pose threats to network integrity and reliability, and is not technically feasible. Granting access to AIN triggers also would pose risks to customer privacy, the accuracy of billing information, message flow control, and the ability of Ameritech's switch to engage in call routing. The principal reason for this determination is that AIN triggers were not designed to accommodate multiple service-provider interconnection.

The Panel finds further that MCI is not entitled to "immediate unbundling" of the subloop element known as the loop distribution. The Panel adopts Ameritech's position, under which subloop unbundling of the loop distribution — as well as the loop concentrator/multiplexer and loop feeder — is offered through the BFR process. In doing so, we find that subloop unbundling (a) is not technically feasible in all instances, and (b) even where it is technically feasible, presents price and network reliability issues that cannot be resolved on a "one size fits all" basis.

Offering loop distribution through the BFR process is entirely consistent with the FCC's decision not to designate the loop distribution as a standard network element. (Order, ¶ 391). As the FCC has recognized, requests for unbundled loop distribution are

DECISION:

The parties disagree concerning the billing system to be used for charges relating to interconnection, unbundled access and resale. MCI has requested that Ameritech implement CABS or a CABS-like billing systems. The Panel rejects this position. Ameritech already uses the Ameritech Electronic Billing System (AEBS), which adheres to Bellcore standards and is the existing standard for billing local exchange service. The CABS billing system is currently used only for billing trunk side service, such as interexchange access service, and not for local exchange service. The Panel has determined that Ameritech may continue to use the AEBS system for billing resold service, and adopts § 10.16 of the Ameritech Agreement.

35. ISSUE:

Should Ameritech provide MCI with access to the following databases or information sources in order for MCI to access unbundled elements or make commercial use of such elements?

Centrex Business Group Information
Intercept Information
Operator Reference Information
Customer Record Information System
Emergency Service Information
Repair/Dispatch Information
Installation/Order Processing Data
Switch Network ID Information
Local Calling Area Data
CMDS Database

Plant Inventory Data
Number Assignment Data

DECISION:

The Panel finds that Ameritech shall provide MCI with the foregoing databases and sources of customer information. Each of these databases or information sources contains information necessary for MCI to provide service to its customer on terms that are at least equal to that which the ILEC provides itself. Ameritech represents it will provide MCI with access to databases and information at parity with Ameritech and its affiliates, as required by the Act. The Panel agrees that Ameritech must provide such information on a nondiscriminatory basis. (FCC Order, ¶¶ 516, 518, and 521). MCI's proposed contract language is hereby adopted.

36. ISSUE:

Should the Commission order Ameritech and MCI to engage in MCI's "Mediation Plus"?

DECISION:

The Commission is not being requested to order "Mediation Plus" so the issue is closed.

38. ISSUE:

Whether there should be any restrictions on the type or nature of equipment

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STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

MCI Telecommunications Corporation:	:	
Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois.	:	96-AB-006

ARBITRATION DECISION

December 17, 1996

Order still provide a reasonable basis for resolution of the issue. We continue to adhere to this position and find no conflict with Section 252(d)(2)(A).

It appears however, that MCI misunderstands the scope of our decision in 96-AB-001. TCG was permitted to charge the tandem interconnection rate after consideration of the totality of evidence presented. This included consideration of the fiber-ring technology employed by TCG, (consistent with the suggestion found in ¶ 1090 of the FCC Order), a map showing geographically widespread deployment of various nodes in its network, testimony regarding the type of switch employed and the various functionalities of the switch, as well as some discussion of the location of TCG's local exchange customers. The decision was not premised solely upon the area for which TCG was certificated to serve or the fact that TCG could serve every customer in a given area through its own facilities or unbundled elements, though these were supporting factors.

We concur with Staff's assessment that MCI has not provided sufficient evidence to support a conclusion that it is entitled to the tandem interconnection rate, and therefore MCI shall charge only the end office rate until otherwise determined in some future proceeding.

Annotations 22 and 23 are not properly before us.

Issue I.3: <u>Establishment of trunking and signaling arrangements</u>
(AI Redline, Annotation 3, 19, 20, 21)

<u>A. Trunks to Tandems</u>

Ameritech Illinois maintains that MCI, having physically connected to at least one Ameritech Illinois tandem switch in each LATA, must run trunks from that tandem to each other Ameritech Illinois tandem in the LATA. Ameritech Illinois witness Dunny testified that this was necessary for purposes of ubiquitous connectivity, network diversity, and custom routing. Ameritech Illinois witness Alexander elaborated that if MCI is to provide its customers with the same level of calling capabilities as Ameritech provides to its customers, the trunk interconnection must be at each local tandem within a LATA where the LATA contains more than one Ameritech tandem.

In its Reply Brief, MCI argues that if Ameritech Illinois is insisting that MCI establish direct trunking to each tandem in a multi-tandem LATA, such a requirement is unlawful, because MCI has the right to designate the point of interconnection. If Ameritech simply wants to ensure that MCI maintains trunking between the

Ameritech Illinois witness Dunny testified to the problems and difficulties that can arise when an MCI customer served with an unbundled loop distribution seeks to migrate to another carrier (e.g., AT&T) that leases whole unbundled loops from Ameritech Illinois and collocates in an Ameritech Illinois central office. Under such circumstances, MCI's use of an unbundled loop distribution may, in fact, prevent the loop from being reconstructed (or cause a delay of several months), and thereby prevent an MCI customer from migrating to another carrier that wished to serve the customer using a whole unbundled loop.

Staff argues that the issues regarding loop unbundling and sub-loop unbundling have been addressed in 83 Illinois Administrative Code 790. Therefore, the Commission should not address the issue of loop unbundling or sub-loop unbundling as those issues have been fully addressed by rule and both parties should merely be directed to adhere to the Administrative Code.

Commission Conclusion

The Commission notes that subloop unbundling has already been addressed in 83 Ill. Adm. Code 790. That rule provides for subloop unbundling through a bona fide request process. Ameritech Illinois' position is simply that it will provide subloop unbundling of the loop distribution, as well as the loop concentrator/multiplexer and loop feeder, through a bona fide request process. Ameritech Illinois' proposal is consistent with the FCC's decision not to designate the loop distribution as a standard network element. As the FCC noted, "[i]nformation developed by the parties in the context of a specific request for subloop unbundling will provide a useful framework for addressing the loop maintenance and network reliability matters [the FCC has] identified." Furthermore, the FCC concluded that, "[B]ased on the current record evidence, the technical feasibility of subloop unbundling is best addressed at the state level on a case-by-case basis." (FCC Order ¶ 391).

The notion that subloop unbundling implicated certain technical feasibility issues was precisely the reason we adopted a BFR process in 83 Ill. Adm. Code 790. In the First Notice Order in that proceeding, we dismissed many of the objections raised by local exchange carriers by noting that the rule was primarily procedural in nature, and that the technical issues they identified were best addressed in the context of a specific request. We are gratified to find the FCC taking essentially the same position.

MCI's proposal for immediate unbundling of loop distribution as a standard offering is inconsistent with the FCC Order and the Illinois Administrative Code, and it is therefore rejected. We caution however, that with respect to any specific request for subloop unbundling, we intend to strictly apply the FCC's definition of "technically feasible." Our decision here should not be construed as agreement that any of the various arguments Ameritech Illinois raised in this proceeding actually constitutes an issue of technical feasibility.

Issue II.1C: <u>Expedited process for further unbundling</u>

(AI Redline, Schedules Annots. 6, 7, 8)

A. Timetable

While there is agreement on the need for establishing a bona fide request (BFR) process, the specifics of the BFR process remain open. MCI maintains that its proposal calls for prompt resolution of requests, while Ameritech Illinois' proposed BFR process would interject unnecessary delay into what should be a straightforward process. As mandated by the FCC, Ameritech Illinois has the burden of proving that unbundling a requested network element is not technically feasible. MCI argues that if there are no time frames, or unreasonably long time frames, established for the BFR process, relatively straightforward requests could easily be delayed to the extent where there would be serious anticompetitive implications.

MCI proposes the following procedure for the ordering of additional network elements:

- When MCI requests a new unbundled element from Ameritech Illinois, if Ameritech Illinois does not agree to provide the unbundled element within ten days, MCI has an additional ten days to file a petition with the Commission seeking its determination that Ameritech Illinois be required to provide the unbundled element.

- Ameritech Illinois must respond within ten days of the petition being filed and demonstrate either that it is not technically feasible to provide the requested unbundled element, or that such provision will harm network reliability.

- The Commission would then rule on the petition within twenty days of Ameritech Illinois' response, and in no case more than thirty days after the filing of MCI's petition.

MCI objects that Ameritech Illinois' proposal includes 5 days simply to acknowledge receipt of a BFR, then 30 days to evaluate the request, inform MCI whether Ameritech Illinois believes it should be required to fulfill the request, and provide the results

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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

MCI TELECOMMUNICATIONS CORPORATION PETITION FOR ARBITRATION PURSUANT TO SECTION 252(b) OF THE TELECOMMUNICATIONS ACT OF 1996 TO ESTABLISH AN INTERCONNECTION AGREEMENT WITH INDIANA BELL TELEPHONE COMPANY d/b/a AMERITECH INDIANA	)	**CAUSE NO. 40603-INT-01** **APPROVED:**

DEC 18 1996

BY THE COMMISSION:
David E. Ziegner, Commissioner
Scott R. Jones, Assistant Chief Administrative Law Judge

On September 3, 1996, MCI Telecommunications Corporation ("MCI" or "Petitioner") filed with the Indiana Utility Regulatory Commission ("IURC" or Commission") its petition ("MCI Arbitration Petition" or "Petition") in this cause. MCI requested that the Commission arbitrate issues to establish an Interconnection Agreement with Indiana Bell Telephone Company, Incorporated d/b/a Ameritech Indiana ("Ameritech") pursuant to Section 252(b) of the Telecommunications Act of 1996, *Pub. L. No. 104-104 (1996) to be codified at 47 U.S.C. §§151 et seq. ("TA-96" or "The Act")*.

The Commission, based on the applicable law, the Arbitrator's report, and the evidence herein now finds as follows:

1. Jurisdiction. Jurisdiction is granted pursuant to the Telecommunications Act of 1996, as described in the IURC's Interim Procedural Order and Amended Interim Procedural Order issued in Cause No. 39983 on June 5, 1996 and August 21, 1996, respectively.

The Act became effective on February 8, 1996. Section 251 of the Act provides standards for interconnection, and requires the FCC to establish implementing regulations within six (6) months. Section 252 sets forth the procedures for negotiating (§252(a)) a binding interconnection agreement, and provides that any party to the negotiation may request a State Commission to mediate (§252(a)(2)), as well as arbitrate (§ 252(b)) its agreement. Section 252 also provides the statutory requirements for State Commission approval of interconnection agreements.

By docket entry dated September 23, 1996, the Presiding Chief Administrative Law Judge ("ALJ") notified the parties that the Commission would be assisted in this matter by Ms. Mary Hinrichs ("Arb. Hinrichs"). *See*, IURC's Interim Procedural Orders issued in Cause No. 39983 on June 5, 1996 and August 21, 1996, respectively. In accordance with the docket entry, on September 30, 1996 a meeting between Arb. Hinrichs and the parties was held, at which and where MCI agrees to pay the relevant costs of making such arrangements available.

Loop distribution is a sub-loop element. The FCC recognized the incumbent's contention that "access by a competitor's personnel to loop equipment necessary to provide subloop elements, such as the FDI, raise network reliability concerns for customers served through the FDI." *FCC Order,* ¶ 391. The FCC further acknowledged: (i) that access to loop concentration points by other carriers could increase the risk of error by a competitor's technicians that may disrupt service to customers of one or both carriers; and (ii) that the potential for poor technical implementation of subloop interconnection and the lack of overall responsibility for loop performance could degrade overall service quality. *Id.* The FCC "determined that we must take into account specific, demonstrable claims regarding network reliability in determining whether to identify any particular component as an element that must be unbundled." *Id.* The FCC concluded that "the technical feasibility of subloop unbundling, is best addressed at the state level on a case-by-case basis." *Id.*

In this arbitration, Ameritech's witness Gregory Dunny in his cross-examination testimony outlined the technical infeasibility of loop distribution. Tr. G-67 *et seq.* As an aid to his testimony, Mr. Dunny drew a rough schematic of the loop distribution issue. Petitioner's Exh. CX-1. While both MCI's witness Maria Marzullo, and Ameritech's Mr. Dunny acknowledge there are areas of technical feasibility, they both testified there is also technical infeasibility. Mr. Dunny credibly explained his concern in detail that unbundling loop distribution for MCI at the cross-connect box as requested would result in carriers at Ameritech's central office (Ameritech and other collocated carriers) no longer being connected to the customer premises. Such a result would discriminate against all carriers other than MCI, and is not in the public interest. MCI did not refute Mr. Dunny's explanation.

Accordingly, we find that Ameritech has effectively demonstrated that loop distribution, as described by MCI in this proceeding, adversely affects the service of carriers other than MCI and non-MCI customers. We further find that loop distribution should not be unbundled as a standard offering at this time. Ameritech has proposed the use of the BFR process for subloop unbundling, which we find consistent with the FCC Order and the manner by which this element should be requested by MCI.

D. Branding

Although it is not entirely clear from the parties' testimony, proposed contract language, or proposed orders, we believe that the initial issue under dispute is the provision of branding for services provided to MCI customers by Ameritech. If it is not

1-9-97

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Petition of MCI Telecommunications Corporation for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Ameritech Ohio.

Case No. 96-888-TP-ARB

ARBITRATION AWARD
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The panel noted that, for some of the loop facilities, MCI has agreed to use the BFR process (Tr. III, 358-359). Also, the panel pointed out that the FCC plans to revisit the specific issue of subloop unbundling sometime in 1997 (FCC Order at ¶391). Given the current uncertainties associated with loop distribution, the panel recommended adoption of Ameritech's proposal.

MCI believes that the Commission should order the unbundling of loop distribution. MCI states that the record shows that such unbundling is technically feasible and, thus, the Commission cannot decline to unbundle a network element, unless: (1) the element is proprietary and MCI could offer the same telecommunications service through the use of other, nonproprietary UNEs within Ameritech's network; or (2) Ameritech's failure to provide access would not decrease the quality of, and not increase the financial or administrative costs of, the service MCI seeks to offer, as compared with providing that service over other UNEs in Ameritech's network. 47 C.F.R. §51.317. MCI notes that Ameritech's concern as to whether there is adequate space in a given feeder/distribution housing unit should be a fairly simple determination to make, not something that requires the entire issue to be addressed through the BFR process. MCI states that deferring the unbundling of loop distribution to the BFR process will unnecessarily delay its availability and likely create further disputes.

Ameritech states that unbundling loop distribution does not depend solely upon the space in a given feeder/distribution housing unit, but instead upon the type of loop, engineering matters, and unique costs in provisioning a subloop. Also, Ameritech states that, even MCI acknowledges that technical feasibility for subloop unbundling will differ in each case. Thus, Ameritech states that the panel correctly determined that the issue should be addressed in the BFR process.

Arbitration Award: With subloop unbundling, Ameritech argues that technical feasibility is not certain in all cases. In support of its argument, Ameritech points to a May 1996 Bellcore report which indicates that subloop unbundling is unavailable on 27 percent of Ameritech's regional loops (Oral Args. Tr. 17). Ameritech's position that subloop unbundling is not technical feasible in all cases, apparently, is recognized as such by MCI witness Marzullo. The fact, however, remains that Ameritech has not disputed that subloop unbundling is technically feasible. MCI argues that, once we determine loop distribution is technically feasible, the Commission has no choice but to require Ameritech to provide loop distribution as a network element. We agree that Ameritech has not, in this proceeding, disputed the technical feasibility of providing loop distribution. Based upon the record in this proceeding, the Commission, therefore, finds that loop distribution is technically feasible and should be recognized as a network element limited to the locations where Ameritech is capable of providing loop distribution. We further recognize that such unbundling costs have yet to be determined. Ameritech has not developed a TELRIC study for loop distribution. Nor has MCI, at this time, identified where it would require loop distribution. Without additional information, we have no way of determining if Ameritech is capable of providing loop distribution to MCI upon its request or what the appropriate charges should be. The

Commission can, however, require Ameritech to provide loop distribution to MCI in technically feasible locations using the BFR process. The Commission will monitor the unbundling of loop distribution. Any denial of a request for loop distribution must be submitted to the Commission, including documentation of the basis for the denial.

> As to integrated digital loop carriers (DLCs), should Ameritech make alternate arrangements (including those listed), equal in quality, to permit MCI to order a contiguous unbundled local loop at no additional cost to MCI (Schedule 9.2.1)?

The panel noted that the FCC has found it technically feasible to unbundle the loop from DLCs and requires the requesting carrier pay such costs associated with the unbundling mechanisms (FCC Order at ¶384). The panel recommended, therefore, that Ameritech provide unbundled integrated DLC-delivered loops and MCI pay for the associated costs. The panel also concluded that Ameritech must condition the loop, if necessary and technically feasible, in order to provide a digital loop functionality requested by MCI. Further, the panel recommended that MCI pay the costs incurred by Ameritech for such conditioning.

MCI does not take exception to the panel's recommendation but, rather, asks for clarification with respect to the compensation aspect of unbundling the loop. MCI contends that the Commission should require MCI to only compensate Ameritech for the costs associated with the mechanisms used by Ameritech to provide DLC unbundling to the extent that Ameritech can prove that it must install additional equipment to support the unbundling. MCI states that it should not have to pay when there is no additional cost incurred in provisioning unbundled loops in this manner. MCI argues that the interconnection agreement should contain language to reflect that Ameritech can charge a just and reasonable amount for DLC unbundled loops when Ameritech can demonstrate that additional equipment must be installed to support such unbundling.

Ameritech argues that MCI is now attempting to narrow the panel's recommendation. Ameritech states that it must purchase and use certain equipment in order to provide unbundled integrated DLCs and MCI should be obligated to pay <u>all</u> associated costs when it requests unbundling of integrated DLCs.

Arbitration Award: The Commission adopts the panel's recommendation on DLCs. The panel appropriately recommended that Ameritech provide unbundled DLC to MCI and MCI be required to compensate Ameritech for the costs associated with the mechanism used by Ameritech to provide such unbundling. The Commission finds MCI's request that it be allowed to order contiguous unbundled local loops at no additional cost to MCI would, in effect, deny Ameritech an opportunity to recover its costs of equipment and facilities used by MCI. Therefore, the Commission supports the panel's recommendation that the costs associated with the DLC mechanisms be recovered by

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Public Service Commission of Wisconsin

Cheryl L. Parrino, Chairman
Daniel J. Eastman, Commissioner
Joseph P. Mettner, Commissioner

Jacqueline K. Reynolds, Executive Assistant
Lynda L. Dorr, Secretary to the Commission
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John R. Dawson
Foley and Lardner
777 East Wisconsin Avenue
Milwaukee, WI 53202

Re: Petition of MCI Telecommunications Corporation for Arbitration per § 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin)

3258-MA-101
6720-MA-104

Dear Messrs. Berman and Dawson:

Enclosed is the award of the arbitration panel.

As you see in the implementation section of the award, the parties have until January 31, 1997, to produce joint contract language based on the award and return one joint agreement to the panel. The agreement should indicate which provisions resulted from the arbitration award as opposed to those negotiated by the parties.

After a short period of staff review, the panel will then circulate the agreement to the standing notice list for comment and submit the award, agreement, and comments to the Commission for approval, and the 30 days allotted for the approval process will start to run. As we have agreed, all of those documents will be public.

For the Panel.

Signed this 26th day of December, 1996.

Ann Pfeifer
Chair, Arbitration Panel

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Enclosure

BEFORE THE

PUBLIC SERVICE COMMISSION OF WISCONSIN

Petition of MCI Telecommunications Corporation
for Arbitration per § 252(b) of the
Telecommunications Act of 1996 to Establish an
Interconnection Agreement with
Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin)

3258-MA-101
6720-MA-104

DECISION OF THE ARBITRATION PANEL

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rate be an appropriate proxy rate. First Report and Order, at para. 1090. The record fails to establish that MCI's switch, located in Milwaukee, serves an area comparable to that served by Ameritech's tandem switch, as MCI contends. Rather, MCI has a single switch in Wisconsin, located in Milwaukee which is the same "Class 5" type of switch that Ameritech uses in its end offices.

The Panel finds that MCI will begin to serve customers in a small geographic area in the Milwaukee SMSA at the outset. While it is possible that the MCI switch will perform some functions typically associated with a tandem switch, the predominant use of the facility will be that of an end office, providing network access to MCI access lines in the Milwaukee vicinity. Therefore, the Panel decides that it is not appropriate to require Ameritech to pay the tandem rate for interconnection to MCI's switch.

7. Issue I.3: Establishment of trunking and signaling arrangements

a. Position of parties

IntraLATA and interLATA exchange access traffic historically has been combined on the same trunk, with percent of interstate usage (PIU) factors used for purposes of allocating traffic to the different jurisdictions. MCI argues that the same principle can apply to combining local and toll usage on the same trunk groups as long as a percent of local usage (PLU) is provided, or other suitable measurement method is utilized.

Ameritech first argues that MCI, having physically connected to at least one Ameritech tandem switch in each LATA, must run trunks from that tandem to each other Ameritech tandem in the LATA. Ameritech's argument is premised upon a concern that MCI should have to provide its customers with the same level of calling capabilities as

Loop Distribution

a. Position of the parties.

MCI has requested the "immediate unbundling" of the subloop element known as the loop distribution, and the provision of the loop distribution as a standard offering. Ameritech has offered subloop unbundling of the loop distribution — as well as of the loop feeder, which is the other principal component of the loop — through the BFR process.

b. Decision.

The Panel finds that Ameritech's position should be approved.

The FCC already has determined that subloop unbundling should be furnished via the BFR process, rather than as a standard offering. After receiving abundant evidence during the rulemaking process, the FCC concluded:

> [W]e decline at this time to identify the . . . distribution component[] of the loop as individual network elements. We find that proponents of subloop unbundling do not address certain technical issues raised by incumbent LECs concerning subloop unbundling. . . . [T]he technical feasibility of subloop unbundling is best addressed at the state level on a case-by-case basis. Information developed by the parties in the context of a specific request for subloop unbundling will provide a useful framework for addressing the loop maintenance and network reliability matters that we have identified. (First Report and Order, para. 391, emphasis added.)

Nothing in the record provides any basis to alter the judgment of the FCC on subloop unbundling.

The evidence presented in this proceeding demonstrates that unbundling the loop distribution is not technically feasible in all instances. A recent Bellcore report stated that subloop unbundling is unavailable on 27% of Ameritech loops. Ameritech testified to the various technical problems inherent in unbundling the loop distribution. and explained how such unbundling is not technically feasible in every instance, such as where the feeder and distribution cross-connect on a pole. MCI itself acknowledged that there may be particular instances where for specific locations [loop distribution] unbundling is not technically feasible. Also, at the evidentiary hearing, MCI recognized that there are circumstances where such unbundling could significantly deter reconnections, as where multiple carriers seek access to a single cross-connect box (the point of connection between the loop feeder and the loop distribution).

Because there are instances where unbundling of a given element is not technically feasible or uniformly applicable, it is not possible to make a standard offering of that element. Subloop unbundling calls for the BFR process, which is designed to resolve the technical feasibility issues that arise in the context of specific unbundling requests.

Secondly, the Panel notes that loop distribution unbundling, even in instances where it is technically feasible, presents price, network reliability and non-discrimination issues that can be resolved only in the context of a BFR. Ameritech noted the problems and difficulties that can arise when an MCI customer served with an unbundled loop distribution seeks to migrate to another carrier (e.g., AT&T) that leases whole unbundled loops from Ameritech and collocates in an Ameritech central office. Under such circumstances, MCI's use of an unbundled loop distribution may, in fact, prevent the loop from being reconstructed (or cause a delay of several months), and thereby prevent an MCI customer from migrating to another carrier that wished to serve the customer using a whole unbundled loop.

The record evidence makes clear, then, that there are a number of unresolved technical and policy issues concerning loop distribution unbundling. The existence of these problems supports the determination, already reached by the FCC, that subloop unbundling should proceed via the BFR process, rather than be made available as a standard offering.

Dark Fiber

a. Position of the parties.

Ameritech opposes MCI's request for dark fiber even though it does not argue technical infeasability. Ameritech's only objection for providing dark fiber is essentially that dark fiber is not an unbundled element because it is not "currently" used to provide a telecommunications service. The Act, however, defines network element as follows:

> [A] facility or equipment used in the provision of a telecommunications service. Such term also includes features. functions, and capabilities that are provided by means of such facility or equipment. 47 USC s. 3(45).

Ameritech points out that the word "currently" does not appear anywhere in the definition of network element.

b. Decision.

Although, as indicated in Issue II.1A above, the panel does not agree that dark fiber should be provided as an unbundled element as a part of the minimum list of elements provided by the FCC, the panel will require Ameritech to provide dark fiber, to the extent it is available.

Copper loops purchased by MCI from Ameritech and Network Interface Devices ("NID") which can be purchased without associated switching or other electronics would also fail to qualify as network elements under Ameritech's definition since they too, standing alone, do not "currently" provide any features and functions. These network facilities, which have been identified by the FCC as elements that Ameritech must provide on an unbundled basis are network elements. Dark fiber is analogous to copper loops and network interface devices in that regard. As such, the panel will not require Ameritech to install dark fiber